

SENATE BILL NO. 404

INTRODUCED BY G. LIND

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING ~~LIMITS ON LIABILITY FOR EMERGENCY CARE;~~
5 ~~LIMITING LIABILITY FOR FIREWARDENS; AND AMENDING SECTION 27-1-714, MCA~~ FIREFIGHTERS;
6 PROVIDING FOR LEGAL REPRESENTATION OF FIREFIGHTERS; REQUIRING THE DEPARTMENT OF
7 NATURAL RESOURCES AND CONSERVATION AND LOCAL GOVERNMENTAL FIRE AGENCIES TO PAY
8 ATTORNEY FEES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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12 ~~Section 1.~~ Section 27-1-714, MCA, is amended to read:

13 ~~"27-1-714. Limits on liability for emergency care rendered at scene of accident or emergency. (1)~~
14 Any person licensed as a physician and surgeon under the laws of the state of Montana, any volunteer firefighter
15 or officer of any nonprofit volunteer fire company a governmental fire agency, or any other person who in good
16 faith renders emergency care or assistance with or without compensation except as provided in subsection (2)
17 at the scene of an emergency or accident is not liable for any civil damages for acts or omissions other than
18 damages occasioned by gross negligence or by willful or wanton acts or omissions by such the person in
19 rendering such the emergency care or assistance.

20 ~~(2) Subsection (1) includes a person properly trained under the laws of this state who operates an~~
21 ambulance to and from the scene of an emergency or renders emergency medical treatment on a volunteer basis
22 so long as the total reimbursement received for such volunteer services does not exceed 25% of his gross annual
23 income or \$3,000 a calendar year, whichever is greater.

24 ~~(3) If a nonprofit subscription fire company refuses to fight a fire on nonsubscriber property, such the~~
25 refusal does not constitute gross negligence or a willful or wanton act or omission.

26 ~~(4) A person acting within the course and scope of duties described in subsections (1) and (2) is not~~
27 criminally liable for acts and omissions other than those committed purposely and knowingly.

28 ~~(5) As used in this section, "governmental fire agency" means a fire protection entity organized under~~
29 Title 7, chapter 33."

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1 ~~NEW SECTION. Section 2. Liability of firewardens. A firewarden is not civilly or criminally liable for~~
 2 ~~acts and omissions that are committed within the course and scope of employment, other than those committed~~
 3 ~~purposely and knowingly.~~

4
 5 ~~NEW SECTION. Section 3. Codification instruction. [Section 2] is intended to be codified as an~~
 6 ~~integral part of Title 76, chapter 13, part 1, and the provisions of Title 76, chapter 13, part 1, apply to [section 2].~~

7
 8 NEW SECTION. SECTION 1. LIABILITY OF FIREFIGHTERS. (1) A FIREWARDEN, FIREFIGHTER, OR OFFICER OR
 9 EMPLOYEE OF A STATE OR GOVERNMENTAL FIRE AGENCY IS NOT CRIMINALLY LIABLE FOR ANY CIVIL DAMAGES FOR ACTS
 10 OR OMISSIONS WHILE FIGHTING FIRES OTHER THAN DAMAGES OCCASIONED BY GROSS NEGLIGENCE OR BY WILLFUL OR
 11 WANTON ACTS OR OMISSIONS ACTS OR OMISSIONS COMMITTED WITH DEMONSTRABLE CRIMINAL INTENT.

12 (2) FOR THE PURPOSES OF THIS SECTION, "GOVERNMENTAL FIRE AGENCY" MEANS A FIRE PROTECTION ENTITY
 13 ORGANIZED UNDER TITLE 7, CHAPTER 33.

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 15 NEW SECTION. SECTION 2. LEGAL REPRESENTATION FOR STATE FIREFIGHTERS. THE DEPARTMENT SHALL
 16 PROVIDE LEGAL REPRESENTATION TO ITS EMPLOYEES WHO FIGHT FIRES FOR ANY CRIMINAL PROSECUTION ARISING FROM
 17 AN ACT OR OMISSION ON A FIRE. (1) THE DEPARTMENT SHALL PAY REASONABLE ATTORNEY FEES AND COSTS FOR OUTSIDE
 18 LEGAL COUNSEL TO DEFEND A FIREFIGHTER EMPLOYED BY THE DEPARTMENT AGAINST A CRIMINAL PROSECUTION FOR A
 19 GOOD FAITH ACT OR OMISSION BY THE FIREFIGHTER ARISING FROM THE FIREFIGHTER'S PERFORMANCE OF DUTIES DURING
 20 A WILDFIRE. THE DEPARTMENT DIRECTOR HAS SOLE DISCRETION TO MAY DETERMINE WHETHER THE FIREFIGHTER'S ACT
 21 OR OMISSION WAS IN GOOD FAITH AND ARISING FROM THE PERFORMANCE OF THE FIREFIGHTER'S DUTIES DURING A
 22 WILDFIRE. THE REQUIREMENT TO PAY ATTORNEY FEES AND COSTS DOES NOT APPLY TO ANY POSTCONVICTION LEGAL
 23 PROCEEDINGS.

24 (2) THE DEPARTMENT SHALL ADOPT RULES TO IMPLEMENT THIS SECTION.

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 26 NEW SECTION. SECTION 3. LEGAL REPRESENTATION FOR FIREWARDEN, FIREFIGHTER, OR EMPLOYEE --
 27 LOCAL GOVERNMENTAL FIRE AGENCY. A LOCAL GOVERNMENTAL FIRE AGENCY SHALL PAY REASONABLE ATTORNEY FEES
 28 AND COSTS FOR OUTSIDE LEGAL COUNSEL TO DEFEND A FIREWARDEN, FIREFIGHTER, OR PAID OR VOLUNTEER EMPLOYEE
 29 OF A LOCAL GOVERNMENTAL FIRE AGENCY MUST BE PROVIDED LEGAL REPRESENTATION BY THE EMPLOYING ENTITY FOR
 30 AGAINST A CRIMINAL PROSECUTION ARISING FROM AN ACT OR OMISSION IN THE PERFORMANCE OF DUTIES ON A FIRE OR

1 IN FIRE TRAINING THAT IS MADE IN GOOD FAITH AND WITHIN THE COURSE AND SCOPE OF EMPLOYMENT OF THE
 2 FIREWARDEN, FIREFIGHTER, OR PAID OR VOLUNTEER EMPLOYEE. THE LOCAL GOVERNMENTAL FIRE AGENCY MAY
 3 DETERMINE WHETHER THE ACT OR OMISSION OF THE FIREWARDEN, FIREFIGHTER, OR PAID OR VOLUNTEER EMPLOYEE WAS
 4 IN GOOD FAITH AND ARISING FROM THE PERFORMANCE OF THE EMPLOYEE'S DUTIES IN A FIRE OR IN FIRE TRAINING. THE
 5 REQUIREMENT TO PAY ATTORNEY FEES AND COSTS DOES NOT APPLY TO ANY POSTCONVICTION LEGAL PROCEEDINGS.

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 7 **NEW SECTION. SECTION 4. CODIFICATION INSTRUCTION.** (1) [SECTION 1] IS INTENDED TO BE CODIFIED AS
 8 AN INTEGRAL PART OF TITLE 27, CHAPTER 1, PART 7, TITLE 45, CHAPTER 2, PART 2, AND THE PROVISIONS OF TITLE 27,
 9 CHAPTER 1, PART 7, TITLE 45, CHAPTER 2, PART 2, APPLY TO [SECTION 1].

10 (2) ~~[SECTION 2] IS [SECTIONS 2 AND 3] ARE~~ [SECTION 2] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF
 11 TITLE 76, CHAPTER 13, PART 1, AND THE PROVISIONS OF TITLE 76, CHAPTER 13, PART 1, APPLY TO [SECTION 2] [SECTIONS
 12 2 AND 3] [SECTION 2].

13 (3) [SECTION 3] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 7, CHAPTER 33, AND THE
 14 PROVISIONS OF TITLE 7, CHAPTER 33, APPLY TO [SECTION 3].

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 16 ~~NEW SECTION. Section 4. Two-thirds vote required. Because [sections 1 and 2] limit governmental~~
 17 ~~liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each~~
 18 ~~house of the legislature for passage.~~

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 20 **NEW SECTION. SECTION 5. EFFECTIVE DATE.** [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

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